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DEPARTMENT OF STATE

AIRGRAM

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A-71

A-71, NO.

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HANDLING INDICATOR

TO : Amembassy, TOKYO.

FROM : DEPARTMENT OF STATE

SUBJECT : Consular Convention with Japan

REF :

DEPARTMENT OF STATE A/CDC/MR MAY 1982
REVIEWED BY DH DATE
RDS☐or XDS☐EXT. DATE
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Aug 2 12 41 PM '62

Reference is made to the Embassy's Airgrams 07 of July 6 and 10 of July 5, 1962, concerning further progress in negotiation of the consular convention. The matter of Protocol 2 is the subject of a separate communication. With respect to the remaining points at issue, the Department is greatly pleased at the progress made in the negotiations, and anticipates an early finalizing of all matters at issue. The following discussion will be a synthesis of the matters presented in Airgram 07 which appear to still be unresolved, or which warrant further comment.

Article 1.

In response to the Japanese query as to the territorial applicability of this Article, it is interpreted to include the United States Pacific trust territories, since these are areas subject to the present authority and jurisdiction of the United States.

Article 3 (1).

While the Department would have no strong objection to the proposed Japanese amendment, it might be observed to the negotiators that this would seem to encumber the convention with unnecessary detail, merely to implement the domestic legislation of Japan. Even the present draft of the International Law Commission's Consular Convention merely defines a consulate to be a consulate-general, a consulate, a vice-consulate, or a consular agency. (See Article 1 (a) thereof.) The Department's short form draft provides no definition

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Drafted by: L:L/A:LJHarris:eg 7-19-62

Contents and Classification Approved by: Warder McClusky

Clearances:
L/C - Mr. Spangler (Article 9 (4) in substance).
L/SFP - Mr. Yingling (Article 23 (2) in substance).
~~L/T - Mr. Whittington~~ (in draft)
EA - Mr. Swayne (in draft)
U/PR - Mr. Mitchell draft
~~SCS~~ - Mr. Donaldson
A [illegible]

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definition of the types of consular establishments at all. To alleviate the entire problem of definitions, therefore, the Embassy negotiators should propose the deletion of the entire second sentence. Any disagreement as to nomenclature of the consular establishment by the receiving State would be expressed when the agreement in the first sentence of the Article is sought, so no real purpose appears to be served by the retention of the second sentence.

Article 8 (3).

There is no objection to the proposed interchange of paragraphs 3 (a) and 3 (b).

The words "of such officer" were used in the draft to forestall the mixing of private and business papers of the consular officer who was also engaged in private occupation for gain in the receiving State -- i.e. the honorary consul situation. Since consular employees would hardly fit this situation, they were not specified in the Article. The Japanese negotiators might be informed of this rationale. If they persist in the suggested change, however, the Department would have no objection to it.

Article 9 (4).

There is no objection to the change proposed by the Japanese negotiators.

Article 11 (1)(a).

It is believed that the substance of the proposed new sentence to be added to the United States draft of the subparagraph would be the best compromise possible. Because of the unsure connotation of the word "crimes" in United States jurisprudence, the substitution of the word "acts" should be proposed to the Japanese negotiators. This would be in conformity with the wording of the first sentence of the Article. For the record, however, the Japanese negotiators might also be further drawn out on the meaning of "willful misconduct" or "gross negligence". There is no objection to the Japanese wording in incorporating the Agreed Official Minute to Article 11 (1)(a).

Article 13 (2).

There is no objection to the addition of the proposed Japanese sentence between the second and third sentences of this subparagraph, provided the Embassy feels that the sentence would not be undesirable from the point of view of its consular officers or employees.

Article 14 (2).

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Article 14 (2).

It is noted the Japanese negotiators indicated their willingness to draft an agreed official minute to clarify the words "forming part of his household". The Department is willing to accept the Japanese version of Article 14 (2), subject to the inclusion of a clarifying sentence in the Article, along the lines of the thought expressed in Enclosure No. 2 of the Embassy's 07, page 23, third paragraph.

Article 16 (1).

The proposed switching of the word "undue" from the second to the third sentence of this Article is approved.

Article 17 (1)(e).

The Department does not believe this convention is the proper vehicle to cover the matter of service of legal process or other legal documents by lawyers.

The Agreed Official Minutes concerning this subparagraph appear on page 43 of Enclosure 4 of Despatch 185, and speak of the meaning of the term "evidence". The Japanese explanation of this minute, as requested on page 9 of the Department's W-279 does not seem responsive to the Department's query. Further clarification is desired on this point, as well as for the reason for the change of "material" to "real" evidence.

Article 23 (2).

The Department can agree to the substance of the proposed new Japanese paragraph. For reasons of internal consistency and drafting, the Department would propose the following language, in lieu of the Japanese paragraph:

> "The provisions of the preceding paragraph shall not be construed as affecting the rights of vessels in innocent passage through the territorial sea. Such rights are determined by international law."

Protocol 1.

See the discussion at Article 1 to base a reply to the Japanese query.

Protocol 3.

Protocol 3.

The Department would prefer to have reference made to Article 13 (1) in the new Article on limitations, and the subsequent deletion of Protocol 3.

Disposition of Agreed Official Minutes:

With the two following exceptions, the incorporation of the minutes into the body of the convention is approved. With respect to the minute to Article 14 and 17, as incorporated into Article 14 (3), it may be desirable to frame it in the terminology of Article 3, viz., consular offices, instead of "consulates". The inclusion of the Agreed Official Minute to Article 17 (1)(e) is contingent upon the clarification requested above.

Further Action Requested:

It is believed that after the above matters have been discussed and settled with the Japanese negotiators, the only disputed matter will be Paragraph 2 of the Protocol, considered in a separate communication. Accordingly, it may be desirable for the Embassy at that time, in concert with the Japanese, to prepare an agreed-upon draft, appropriately renumbered to take account of the many changes previously made, for consideration, at least on the part of the United States Government, in obtaining clearances within the Department and, later on, within the Executive Branch. The official Japanese language text proposed by the Foreign Office should also be submitted for verification at the same time. When Protocol 2 has been successfully negotiated and the above agreed-upon draft has received appropriate clearances, the details regarding final preparation and signature of the Convention will be the subject of still another communication.

The Japanese negotiators should also be advised, at this time, that in obtaining Executive Branch clearance (see above) that further changes to the draft may well have to be proposed. This may be justified, of course, upon the fact the negotiations have been carried out over such an extended period of time. The Embassy will recall that the Japanese negotiators also reopened quite a few points for the very same reason.

RUSK